

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In Re the Petition of

Pontiaki Special Maritime Enterprise

For Discovery in Aid of a Foreign Proceeding
Pursuant to 28 U.S.C. § 1782

ECF CASE

Civil Action No. 16-cv-2606

IN ADMIRALTY

**PETITION FOR AN ORDER ALLOWING
DISCOVERY PURSUANT TO 28 U.S.C. §
1782**

Petitioner Pontiaki Special Maritime Enterprise (“Pontiaki” or “Petitioner”) hereby submits this Petition for an Order, pursuant to 28 U.S.C. § 1782 and Rules 26, 30, and 45 of the Federal Rules of Civil Procedure, to obtain discovery from United Bank for Africa PLC and Deutsche Bank Trust Company Americas, for use in a pending foreign proceeding, namely, in Petitioner’s suit in the High Court of Justice, Queen’s Bench Division, Commercial Court, Royal Courts of Justice, **Exhibit A** hereto. In support of this Petition, Petitioner incorporates the accompanying Memorandum of Law and Declaration of J. Stephen Simms (the “Simms Declaration”), and state further as follows.

1. Section 1782 provides for discovery in the United States to assist foreign tribunals and parties to proceedings before foreign tribunals, and states, in relevant part:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made ... upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

2. The requirements of § 1782 are satisfied in this case. As explained further in the accompanying Memorandum of Law: (1) the discovery subjects “reside” or are “found” in this

District; (2) the discovery sought is “for use in” a proceeding before a foreign tribunal; and (3) the Applicant is an “interested person” in that proceeding. 28 U.S.C. § 1782. The discretionary factors that a Court may consider when evaluating a §1782 request also weigh in favor of granting this application. *See Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 264-65 (2004).

3. The Simms Declaration confirms that the requested relief is for the purpose of obtaining discovery in aid of a related foreign proceeding pending, the High Court Proceedings.

4. The High Court Proceedings concern a breach of a voyage charter by Tadema Shipping and Logistic Inc. (“Tadema”). Petitioner, Tadema, and Taleveras Petroleum Trading B.V. (“Taleveras”) are parties to a voyage charterparty agreement (the “Voyage Charter”) entered into on February 19, 2014. Pursuant to the Voyage Charter, Pontiaki agreed to charter the Vessel to Tadema, and Taleveras agreed to guarantee Tadema’s obligations under the Voyage Charter. On February 28, 2014, while the Vessel was en route to Curacao at Tadema’s request but before Tadema took delivery, Tadema purported to cancel the Voyage Charter. On February 24, 2015, Pontiaki commenced the High Court Proceedings against Tadema and Taleveras, seeking judgment and damages as a result of Tadema’s breach of the Voyage Charter.¹

5. The accompanying Simms Declaration and the supporting Memorandum of Law confirms United Bank for Africa PLC and Deutsche Bank Trust Company Americas were the institutions involved in the underlying transactions related to the Voyage Charter. Petitioner seeks narrowly tailored discovery as to United Bank for Africa PLC and Deutsche Bank Trust

¹ On March 21, 2016, judgment was entered against Tadema and Taleveras, and in favor of Pontiaki, for USD 1,248,363.00; plus interest through March 7, 2016 of USD 75,881.62; plus interest thereafter of USD 102.68 per day up to and including the date of payment; plus costs of USD 77,800.00. Because the judgment is within the appeals period under English law, the proceedings are still pending for the purposes of discovery sought pursuant to § 1782.

Company Americas, reasonably calculated to lead to the discovery of admissible evidence concerning the actions of Tadema and Taleveras concerning the enforcement of that judgment. The discovery requested in this Petition is necessary information as to the operations of Tadema and Taleveras, especially as to the investigation as to any alter ego theories of liability concerning Taleveras.

6. Accordingly, for the foregoing reasons, and for the reasons set forth in the accompanying Simms Declaration, and the Memorandum of Law in support of this application, Petitioner respectfully requests that this Court enter an order, pursuant to § 1782, in a form similar to the proposed order filed herewith, granting leave to conduct the requested discovery in a form similar to the proposed subpoena attached as exhibits to the Simms Declaration.

WHEREFORE, for the reasons set forth above and in the accompanying Memorandum of Law and Declaration of J. Stephen Simms, Petitioner respectfully requests that this Court grant this Petition for an Order to Obtain Discovery for Use in a Foreign Proceeding.

Dated: April 7, 2016.

/s/ J. Stephen Simms
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